

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Division 3, Department of Corrections

NOTICE IS HEREBY GIVEN that the Director of the Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend section 3025 and 3315 in the California Code of Regulations (CRC), Title 15, Division 3 relating to the collection of DNA samples or specimens from inmates and parolees.

PUBLIC HEARING:

Date and Time: December 30, 2002 From 9am – 12pm
Place: Department of Water Resources Auditorium
1416 Ninth Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close December 30, 2002 from 9am – 12pm . Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 322-3842; or by e-mail at RPMB@executive.corr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Rick Grenz, Chief,
Regulation and Policy Management Branch
Department of Corrections
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 322-9702**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**C. Mraz,
Regulation Management Unit
Telephone (916) 322-9702**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Don Price, Correctional Counselor II
Institution Services
Telephone (916) 327-5305**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and

all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, Initial Statement of Reasons, and the Notice of Proposed Action will also be made available on the Department's website <http://www.cdc.state.ca.us>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action will amend provisions governing the sample or specimen collection of DNA. Currently, if an inmate or parolee refuses to submit a DNA sample, the Department must get a court order to obtain a sample. This is quite burdensome, not only to the Department, but to the courts, and violates the intent of Penal Code (PC) Section 295 et seq.

Senate Bill (SB) 1242, 2001-2002 Regular Session, amended Penal Code Section 298.1 to allow the use of reasonable force to collect blood specimens, saliva samples, or thumb or palm print impressions from inmates or parolees who, after requested to do so, refuse to provide such samples.

These regulations will bring these new procedures into compliance with the provisions of SB 1242.

Section 3025 is amended. Those amendments will:

- Provide that once the specified specimens are obtained, they be submitted to the Department of Justice (DOJ) as soon as administratively practicable. In addition, the phrase "after receiving written notification in accordance with PC 298.1," has been stricken. The obligation to provide a specimen exists without written notification to the inmate or parolee. The legal obligation/duty attaches at the moment the offender is convicted of a qualifying offense. The phrase was stricken for that reason. Also, a writer's palm print impression was added to the list of required specimens because the Palm Print Card provided by the Department of Justice requires such an impression.
- Allow local law enforcement authorities to designate a location where parolees are to have their specimens collected.
- Allow for the disposition of specimens.

- Specify that only designated staff can handle forms or the specimens.
- Explain the consequences if a parolee or inmate refuses to provide required specimens after being given written notification to do so.
- States that the use of reasonable force, as defined, may be used to obtain the required specimens from an inmate or parolee. Reasonable force may only be used after the supervising officer on duty has given written authorization to use such force.
- Requires that all efforts to secure requisite specimen samples, on a voluntary basis shall be employed, before the use of reasonable force is imposed. Staff will use reasonable force to obtain the needed samples if the inmates or parolees don't cooperate. This, however, will only occur after all other efforts have failed.
- Provides for the videotaping of the use of reasonable force to obtain DNA samples when a cell extraction must be performed.

Section 3315 is amended. Those amendments will:

- Strike out the provisions that allow the refusal of submitting to specimen collection and the statement that forced compliance will not occur without a court order. This amendment reaffirms that compliance will be compelled with the use of reasonable force, if necessary.